

Boardman, Michael

From: Boardman, Michael
Sent: Wednesday, August 28, 2024 11:27 AM
To: 'Bill Cash'
Cc: Totino, Edward; Sims, Nancy; 'Jason Ibey'; 'Brad Silverman (BSilverman@fbfglaw.com)'; 'Jean Ralph Fleurmont'; 'Sheldon Eisenberg (seisenberg@sullivantriggs.com)'; 'Nairi Shirinian (nshirinian@sullivantriggs.com)'
Subject: RE: Gromov v. Belkin - Depositions This Week

Bill:

We have received no response from you to our email. Therefore, we have informed Ms. Tecson and Mr. von Boode that they do not have to appear for deposition on Thursday and Friday as planned, as you have decided not to proceed with the depositions.

From: Boardman, Michael <Michael.Boardman@bakermckenzie.com>
Sent: Tuesday, August 27, 2024 6:34 PM
To: Bill Cash <bcash@levinlaw.com>
Cc: Totino, Edward <Edward.Totino@bakermckenzie.com>; Sims, Nancy <Nancy.Sims@bakermckenzie.com>; Jason Ibey <jason@kazlg.com>; Brad Silverman (BSilverman@fbfglaw.com) <BSilverman@fbfglaw.com>; Jean Ralph Fleurmont <jrfleurmont@sullivantriggs.com>; Sheldon Eisenberg (seisenberg@sullivantriggs.com) <seisenberg@sullivantriggs.com>; Nairi Shirinian (nshirinian@sullivantriggs.com) <nshirinian@sullivantriggs.com>
Subject: RE: Gromov v. Belkin - Depositions This Week

Bill:

The witnesses are planning to appear for depositions this week as we had offered and confirmed: Ms. Tecson on August 29 and Mr. von Boode on August 30. If you recall, you initially wanted to proceed with the deposition of Belkin's 30(b)(6) witness on August 15, but agreed to postpone the deposition until the 29th based on a list of conditions. We complied with those conditions, including producing additional documents on August 13 that were inadvertently omitted from prior productions. On that date, **after** the email you attached asking to meet and confer, you stated:

"How about this. Make the production today. Give me the night to look at it and get you a list of what appears to be missing. And we talk tomorrow. I have the whole day open."

You also stated that you intended to do the depositions at the offices of another firm in Los Angeles.

Therefore, we understood that the depositions would go forward on the 29th and 30th, subject to any further objections from you to the August 13 production, which you were to provide on August 14. We produced the documents as promised and you never indicated that you believed any documents were missing or that any further meet and confer was required, so we understood that your issues were resolved and the depositions would go forward.

Two weeks later, to our surprise, you responded to my email seeking to confirm the start time and location address for the depositions (since the law firm whose office you planned to use to take the depositions had two LA locations) by making a vague allegation of "significant holes" in the production. We do not understand that statement, as the only specific documents you want identified are documents that "establish[] rated capacity" for all power banks. Belkin responded to Gromov's RFPs in good faith and long ago produced documents responsive to Gromov's RFPs as stated in its written responses. We are not aware of an RFP seeking such documents. And, as previously explained, Belkin's August 13 production included additional documents responsive to RFP Nos. 4 and 5. With that production, all testing and design documents for the products at issue have been produced. It should not be a surprise to you that the production did not contain different testing documents for all SKUs since, as you might imagine, Belkin does not necessarily perform separate performance testing on all model numbers (e.g., it does not perform a separate test on a model sold with a white casing vs. a black casing, even though those have separate SKUs). Had you reached out to meet and confer about the production as promised, this clarification could have been provided sooner.

At this point, Belkin's production has been complete for two weeks, fact discovery closes on September 6 and we cannot agree to postpone the depositions further. Ms. Tecson is traveling out of the country the week of September 9 and is not available for a deposition next week. Mr. von Boode is no longer a Belkin employee and we cannot control his schedule. We suggest you go forward with the depositions on the 29th and 30th as planned. Please confirm by 9 a.m. Pacific tomorrow. If we do not hear from you, we will release the witnesses and will not agree to them being deposed again absent a court order requiring same.

Thank you,
Michael

From: Bill Cash <bcash@levinlaw.com>

Sent: Tuesday, August 27, 2024 4:27 PM

To: Boardman, Michael <Michael.Boardman@bakermckenzie.com>

Cc: Totino, Edward <Edward.Totino@bakermckenzie.com>; Sims, Nancy <Nancy.Sims@bakermckenzie.com>; Jason Ibey <jason@kazlg.com>; Brad Silverman (<BSilverman@fbfglaw.com> <BSilverman@fbfglaw.com>); Jean Ralph Fleurmont <jrfleurmont@sullivantriggs.com>; Sheldon Eisenberg (<seisenberg@sullivantriggs.com> <seisenberg@sullivantriggs.com>); Nairi Shirinian (<nshirinian@sullivantriggs.com> <nshirinian@sullivantriggs.com>)

Subject: [EXTERNAL] RE: Gromov v. Belkin - Depositions This Week

Mr. Boardman,

I'm copying the *Miley* lawyers as well.

Well. We had been waiting for you to tell us who was available on what date. You wrote: "[I am confirming with the witnesses but that works for us.](#)" I read that as, it was OK with you the lawyers, and you'd get back to us to "confirm with the witnesses."

We have gone through all of your productions. There still appear to be significant holes in the areas of design materials and communications; marketing info and representations; labeling; and test results.

I previously wrote to you about test results in particular back on August 6. That e-mail has never really been substantively answered. I'm attaching it here. The question is: "where are the documents establishing rated capacity on the *other* 100-some Belkin power banks?" I found results for about 10. That remains an open question. We can confer on it tomorrow if you like, but I think it's a clear question.

One of the things Belkin has not done and that I think would help is to comply with Rule 34:

(E) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business **or must organize and label them to correspond to the categories in the request;**

Since Belkin's documents are clearly not being produced in the usual course of business, the second part of 34(b)(E)(i) applies and Belkin is required to label its documents to correspond to the RFP numbers so we can tell which documents are meant to go with what request. If you used a document platform, this should be easy. Then it would at least be possible to see what documents *Belkin* thinks contain the test results, for example.

Additionally. On the *Miley* side of the house, there were other documents promised to be produced to us a week or more ago, that also haven't been. We need a full production or as close to it as we can get.

We therefore want to push the depositions out again, use the time to really finish Belkin's full, complete production, and go. However, at some point we are going to have to depose on what we have, and our stipulation says if there are late-produced docs, we can come back for a second round. That would be an incentive to finish the productions.

We are asking for depositions in the week of September 9. I don't care if the dates are consecutive or not, although it would be nice.

Bill Cash III

Of Counsel

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From: Boardman, Michael <Michael.Boardman@bakermckenzie.com>
Sent: Tuesday, August 27, 2024 10:14 AM
To: Bill Cash <bcash@levinlaw.com>
Cc: Totino, Edward <Edward.Totino@bakermckenzie.com>; Sims, Nancy <Nancy.Sims@bakermckenzie.com>; Jason Ibey <jason@kazlg.com>; Brad Silverman (<BSilverman@fbfglaw.com>) <BSilverman@fbfglaw.com>
Subject: Gromov v. Belkin - Depositions This Week

CAUTION: This email
message is **EXTERNAL.**

Bill:

Can you please confirm the location and time for the depositions later this week?

Thank you,
Michael

Michael Boardman

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